IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 687 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YOGESH CHANDRAL SHAH - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
Mr.JOSHI, FOR M/S THAKKAR ASSOC. for Appellant(s) : 1,
MS.PANDIT, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 17/04/2007

ORAL JUDGMENT

Present appeal is preferred against the judgment and order of conviction and sentence passed by the learned Special Judge, Panchmahal at Godhra, in

Special Case No.5 of 1996, on 11th July, 1997 for the offence punishable under Sections 3 read with Section 7 (1) (a) (1) of the Essential Commodity Act and sentenced him to undergo three months rigorous imprisonment and was ordered to pay a fine of Rs.5,000/-, in default thereof, to undergo one month rigorous imprisonment. It is alleged that the appellant-accused violated the conditions of Rule 18 (3), 23 of the Gujarat Essential Articles (Licensing Control and Stock Declaration) Control Order, 1981 and Order 9 of the Gujarat Essential Articles Dealers (Regulation) Order 1977.

2. To appreciate the rival side contentions firstly, it would be necessary for the Court to state the facts of the prosecution in brief. The Deputy Mamlatdar, (Civil Supply), Limkheda, Girishbhai Kamjibhai Jamnadas registered the F.I.R., pursuant to the order of the Collector, Panchmahal and it is alleged that the accused illegally acquired / purchased and transported 120 Gunny Bags of wheat in the truck bearing Registration No.GJ-7-U-8490 without any licence. The appellant-accused had illegally

arranged loading of this entire stock of 120 Gunny bags of wheat of Food Corporation of India in the said truck. The authorized Officer attempted to intercept the truck when the same was proceeding towards Godhra, but the truck driver did not stop the truck and ultimately the Police was contacted and after intercepting the truck, all 120 gunny bags of wheat was seized as suspicious wheat stock of F.C.I. The second allegation against the accused is that accused did not maintain the books of account, stock registers, bill-books, etc., for which he was under statutory obligation to maintain the same and such non-maintenance itself is an offence. The third allegation is that when the accused was asked to give statement before the Officer of the Civil Supply Department, he gave false and misleading statement though he had reason to believe that the facts stated by him are false. Investigation was carried out and upon completion of the same, the appellant-accused person was charge-sheeted.

3. Learned Advocate, Mr.Joshi, has taken me through the judgment and order under challenge, as

well as, the oral and documentary evidence led during the course of trial. It submitted that the learned trial Judge has erred in holding the accused guilty for only one offence i.e. non-maintenance of register, bill-book and other documents which were required to be maintained under the conditions of the licence, as well as, Control Order of 1981. It appears that the learned trial Judge was convinced on the alleged admission made by the accused in the statement recorded after interception of the truck and seizure of stock of wheat, being admissible in evidence. When accused is not found responsible for serious charge, he ought to have been acquitted.

4. According to Ms.Pandit, learned A.P.P., the learned trial Judge has rightly recorded the conviction on the admission made by the accused which was made by the appellant-accused voluntarily. Statement of the accused recorded by the Civil Supply Officer is otherwise admissible in evidence because the same is not recorded by the Police Officer. The judgment of the learned trial Judge appears to be a balancing and objective judgment and learned trial

Judge has fairly held that there is no adequate or convincing evidence to show that accused was responsible in purchasing the wheat of F.C.I. and has admitted to transport the entire stock of wheat in a truck which was intercepted by the Police and in the same way the learned trial Judge has observed that it is not safe for the Court to accept the case of the prosecution that he had deliberately gave false and misleading statement. In such a circumstance, the conviction of the accused should be upheld.

5. Having considered the submissions made before the Court, it is not possible for the Court to accept the argument of learned A.P.P. The backbone of the prosecution case initially was that the accused was found involved in transporting 120 gunny bags of wheat without any licence and as per allegation all this stock was purchased either from various fair price shop or from the storage of F.C.I. In real sense there is no clear allegation as to the nature of alleged falsity in the statement given by the accused. It is possible that the Officer of the Civil Supply Department was suspicious about the

transportation of the wheat stock by the accused either from F.C.I. Godown under some pretext or taken away from fair price shop and therefore it is alleged that accused gave a false statement knowing it to be false. When these two major allegations have not been found to be proved, whether the accused can be linked with the crime for the offence punishable under Section 3 read with Section 7 of the Essential Commodity Act is a crucial question. It is true that accused could have been held responsible for the offence, if found, violative of any of the clause either of Control Order, 1981 or the Gujarat Essential Articles Dealers (Regulation) Order, 1977. In the present case, the Court has held that accused had failed in maintaining the outward stock register, inward stock register or bill-book or books of account.

6. The prosecution has examined 11 witnesses. Prosecution Witness No.1, Girishbhai Kamjibhai Nisharta, who has proved the complaint. Prosecution Witnesses No.2 and 3 are the Panch Witness who were declared hostile and have not supported the case of

prosecution. The version of Prosecution Witness No.4, Ismail Abdul Majid Surve, who was the truck driver has supported the theory of defence and he was not declared hostile by the prosecution. Evidence of Prosecution Witness No.5, who was driver of the truck and Prosecution Witnesses No.6 and 7, who were the Panch Witnesses to the Panchnama respectively does not support the case of prosecution. All these witnesses were examined to prove the case of prosecution of illegal purchase and transport of wheat stock. Out of other four witnesses, Prosecution Witness No.8, Suleman Yusufbhai, who was one another truck driver, took the truck to the Office of the Mamlatdar and Prosecution Witness No.9, Ramchandra Gajanand Rao, Mamlatdar, who had intercepted the truck and drawn the Panchnama, have also been examined. The evidence of Prosecution Witness No.11, Maheshwar Hariprasad Joshi, who has been examined at Exh.30 has merely conducted the formal investigation and submitted the charge-sheet. Prosecution Witness No.10, Rajendrakumar Kawaji, D.S.O., Godhra, who has been examined at Exh.32 had proved the alleged irregularities found during the examination of the

record of the business of the accused and therefore, the admission made by the accused before D.S.O., has been considered as satisfactory evidence to link the accused with the crime. Adequacy of the admission is at the touch stone.

7. (i) It is settled legal position that conviction can be based on the admission made by the accused or the confession recorded keeping all legal safeguards in mind. If it is found that the confession is voluntary and otherwise admissible in evidence, the accused can be held responsible. However, as a rule of prudence the Courts have observed in number of cases that it would not be safe to record conviction solely on the confession or admissions made by the accused. Here is not the case of confession made by the accused. The accused had never confessed any thing. The accused had made certain admission at the time while giving statement, recorded by one Officer of the Civil Supply Department. So, if any, admission is to be used as an important piece of evidence and that too treating such admission as satisfactory piece of evidence to

link the accused with the crime, the Court should try to search some corroboration may be direct or otherwise satisfactory.

7. (ii) Here, no such corroboration is available on record of the case. On the contrary, it appears that it was possible for prosecution to produce best evidence to prove the admission of the accused as voluntary and admission of irregularities committed by him. The responsible Officer-Prosecution Witness No.10, (D.S.O., Godhra) examined by the prosecution at Exh.32 has accepted that all these relevant documents were there and were also seized but for reasons best known to the prosecution that have not been produced before the Court. It is the duty of the prosecution to lead the best evidence available with it. It is not safe for the Court to accept the bare word of the Officer, who had recorded the statement of the accused that the accused had made certain admissions voluntarily and with free will. After all the accused was a trader and must be interested in getting the entire stock released.

8. It is not a matter of dispute that the accused was holding the licence to deal in the business of wheat as a whole-sale dealer. It is proved beyond doubt that the entire stock of 120 gunny bags of wheat with a mark of F.C.I. was purchased and it was transported. When the learned trial Judge has observed that such empty gunny bags were available or could have been purchased by any trader for transporting any food grain and has not held the accused responsible for that wrong, there was no scope, practically, for the Department to closely scrutinize the record and stock register of the business of the accused. It appears that these alleged irregularities were projected as a face saving exercise otherwise the Collector would not have released the entire stock seized by the Civil Supply Department. The District Collector has not even observed that the accused is responsible for non-maintenance of the record which were required to be maintained statutorily, otherwise, the Collector would have imposed some penalty or confiscation of the deposit amount. It was possible for the Police or the Civil Supply Department to carry out the test

of the quality of the wheat; the responsible Officer from F.C.I., also could have been called or the fair price shop from where the stock of wheat was purchased could have been located but on account of failure on all this crucial aspect, the Department had decided to prosecute the appellant-accused for so called irregularities on the alleged admission made by the him, otherwise, there was no reason for the Department to keep curtain on the record seized from the business premises of the accused. On the contrary, in the present case the learned Judge ought to have observed that for want of relevant registers, etc., the accused deserves to be given the benefit of doubt. This is a case where accused could have prosecuted the Officer for malicious prosecution on this count.

9. When the accused was not found in illegal and unauthorized business of wheat, this Court would like to give the benefit of doubt to the accused because the accused deserves to be given the benefit of doubt in accordance with the settled legal position. This is a case where a conviction could

not have been based only on mere, so-called, admission made by the accused before the Officer of the Civil Supply Department and not corroborated by any other compelling circumstance or evidence including the documentary evidence.

10. The accused was detained under the scheme of Prevention of Black Marketing Act, but the said order was quashed by this Court considering the pleas that were placed before the High Court. The exoneration of the accused from the grave charge of purchasing and transporting wheat of F.C.I., has made one aspect clear that when whole seller is purchasing the stock from open market then he can directly sale to third party without brining the same to the Godown or his business premises. It would be a matter of formal entries and issuance of bills, etc in such transaction. In the present case, no such grave charges have been made out otherwise, the prosecution would have led such evidence.

11. For the foregoing reasons, the Court is of the view that the order of conviction and sentence

passed by the learned Judge is bad and the same is based on improper appreciation of evidence and therefore, the accused deserves benefit of doubt.

12. Appeal, therefore, requires to be allowed and is accordingly allowed. The judgment and order of conviction and sentence passed by the learned Special Judge, Panchmahal at Godhra in Special Case No.5 of 1996, on 11th July, 1997, is hereby quashed and set aside. The appellant-accused is acquitted from the charges levelled against him. Bail Bond executed by the appellant-accused shall stand discharged. Amount of fine, if paid, by the accused person, be refunded to him on proper identification. Order and Direction accordingly.

(C.K.BUCH, J.)

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